

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

**BRIGITH DAYANA GOMEZ
BARCO**

CASE NO. 6:20-CV-00497

JUDGE JUNEAU

VERSUS

MAGISTRATE JUDGE WHITEHURST

DIANE WITTE, ET AL

MEMORANDUM RULING

Before the Court is Rec. Doc. 43, wherein Petitioner objects to Magistrate Judge Carol B. Whitehurst's denial of her Motion for Attorney Fees, Rec. Doc. 27, a denial styled as a Memorandum Ruling and Order, Rec. Doc. 37. Though Petitioner's argument that the Magistrate Judge erred by issuing a Memorandum Ruling and Order rather than a Report and Recommendation, this Court notes that the proper standard of review is unaffected by whether the instant objection is offered against a legal conclusion in a non-dispositive order pursuant to Fed. R. Civ. P. 72(a) or against any part of a recommended disposition pursuant to Fed. R. Civ. P. 72(b)(1)(3). Either way, the disputed denial of attorney fees is subject to *de novo* review.

After undertaking that independent review of the record and the applicable law, including the Petitioner's objection, the Court agrees with the Magistrate Judge's conclusion that the Motion for Attorney Fees is properly denied, but does so on alternate grounds. Specifically, the Court finds that neither the Government's

conduct nor its position in this litigation lacked a reasonable basis in law and fact, particularly given the novel and difficult circumstances involved in this case, e.g., a rapidly evolving global pandemic coupled with civil conflict in the would-be country of removal. Accordingly, the Government's position was substantially justified, and Petitioner is not entitled to attorney fees. *See Sylemani v. Barr*, 768 F. App'x. 212, 219 (5th Cir. 2019). In light of that finding, the Court need not resolve what remains an open question in this circuit, namely whether the Equal Access to Justice Act ever makes such fees available to a successful habeas petitioner. Thus,

IT IS ORDERED, ADJUDGED, AND DECREED that the Motion for Attorney Fees, Rec. Doc. 27, is **DENIED**.

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 23rd day of August, 2021.



MICHAEL J. JUNEAU
UNITED STATES DISTRICT JUDGE